



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 12-08683
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On April 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 28, 2015. A notice of hearing was issued on November 5, 2015, scheduling the hearing for December 8, 2015. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-F, which were admitted without objection. I held the record open until January 12, 2016, so that Applicant could supplement the record. Applicant timely submitted a packet, which is marked as AX G, and admitted into the record without objection. The transcript was received on

December 16, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations under Guideline F. He provided explanations for each alleged debt.

Applicant is 67 years old. He has three master's degrees. He is married and has two children. He served in the U.S. military from 1966 to 1970, receiving an honorable discharge. He has been with his current employer since 2004 where he serves as a communications coordinator. He completed a security clearance application in 2012. (GX 1) Applicant has held a security clearance for about eight years.

The SOR alleges approximately \$90,000 in delinquent debt, which includes a judgment, and collection accounts. (GX 2 and 3) Applicant notes that he had delinquent accounts at one time, but he does not owe any money. He has either paid them or the money was garnished from his pay. (Tr. 9) He disclosed financial difficulties and the court case on his 2012 security clearance application. (GX 1)

Applicant was unemployed in 1998 for a short period. He found low-paying part time work. He was unemployed for three months in 2004. He cites to the fact that he withdrew money from his 401(k) when he was unemployed in 1998. Due to his age this was considered an early withdrawal, and he was subject to a 30% penalty tax. He paid the penalty by using a credit card. However, he began to have difficulty maintaining the minimum monthly credit card payment. He missed a payment and the interest rate escalated. (Tr. 17) He acknowledged that he withdrew amounts from the 401(k) over the years. (Tr. 27) He acknowledges a garnishment of his wages in 2013 for a non-SOR account that was satisfied in 2014. (AX D) He also referred to a court case that he believed resolved his financial issues for another account. He stated that his current credit score is above 600, which, he claims, shows that he has been paying his bills. His 2014 credit bureau report shows at least 40 accounts that are "pays as agreed." He and his wife attempted to work with the creditors, but did not have sufficient funds to make the lump sums that were required.

As to SOR allegation 1.a for an amount of \$26,277, the debt was taken over by another creditor. Applicant states he went to court in October 2014 and was informed by his attorney that the case was dismissed. (AX A) Applicant submitted a letter from his attorney that stated that the suit was voluntarily dismissed. He noted that it was dismissed after considering the strength of his case. Applicant maintains that his attorney stated that there is no indication that he owes any money.(AX G)

As to the debt in 1.b for an amount of \$23,838, Applicant states that this is the same account described in 1.a. (AX A) The Government agrees that these accounts are duplicates. (Tr. 7) He states that he no longer owes this amount.

As to the debt in 1.c for a collection account in the amount of \$15,194, Applicant stated that this account was also sold to another creditor for \$7,596 and when he went to court in January 2015, the judgment case was dismissed. He agreed to pay the \$7,596. He submitted a letter that states a settlement agreement was reached. He submitted a cancelled check, dated November 25, 2015, in that amount, that satisfied the debt. (AX G)

As to the debt in 1.d for a collection account in the amount of \$7,618, Applicant presented documentation that he settled the debt for \$4,000. He presented evidence that he has made monthly payments in the amount of \$100 for December 2015 and January 2016. (AX G)

As to the debt in 1.e for a collection account in the amount of \$2,641, and 1.f for \$16,342, Applicant maintains that they are owed to the same credit card. He stated that the collection account in 1.f resulted in a judgment. (AX F) Applicant submitted his 2012 pay slip, which showed a bi-weekly garnishment of \$633. He submitted a letter from the credit company showing a zero balance as of December 11, 2015. (AX G)

Applicant's annual salary is about \$80,000. (Tr. 28) His wife usually handles the finances, as she is not employed. He has some savings. He has a budget. He and his wife receive Social Security benefits payments. He estimates that he has a net monthly remainder of several thousand dollars. (Tr. 38) Applicant is current on his daily expenses, mortgage, and car payment. He has not incurred any new debts.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other

evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” It also states that “an individual who is

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant denied that he currently has delinquent debts. The credit reports confirmed that he had delinquent debts and judgments that resulted from penalties for early withdrawal of retirement funds. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has unresolved debt. He is making payments on one account and recently settled others. One judgment resulted in a garnishment of his pay. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) partially applies.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation and the individual acted responsibly under the circumstances) applies. Applicant was unemployed in 1998 and as a result he withdrew money from his 401(k). He paid his taxes with the money. However, the monetary penalty, which he was unable to pay, caused him to use credit cards. He did this over a period of time. He also made late payments which caused a higher interest rate. He also had unemployment in 2003 for a period of time. He attempted to work with creditors, but he did not have sufficient funds. When cases went to court some were dismissed. He was advised by his attorney that he did not owe any money. His pay was garnished as a result of a judgment and he has resolved that account. He is making monthly payments on a settlement amount. He has not incurred new debts. His 2014 credit report confirms that he has many accounts that are listed as "pays as agreed."

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above is paying on an account and had his wages garnished for another. The court suits were dismissed. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved, or is under control) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 67 years old. He has been with his current employer since 2004. He is married and has two children. He has held a security clearance for eight years. He served in the U.S. military and received an honorable discharge.

Applicant provided sufficient information concerning his resolution of his debts. He demonstrated that he has restored his finances to stable levels. He was unemployed and withdrew money from a 401(k), which caused him monetary penalties. He used his credit cards to pay the resulting tax. He has resolved or addressed each account.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge

